

Department of Justice

§ 17.41

the Director, Office of Information and Privacy, United States Department of Justice, Washington, DC 20530, describing the document or material containing the information with sufficient specificity to enable the Department to locate that information with a reasonable amount of effort. The OIP shall promptly forward the request to the component that originally classified the information, or the DRC in the case of an appeal, and provide the requester with an acknowledgement of receipt of the request.

(c) When the description of the information in a request is deficient, the component shall solicit as much additional identifying information as possible from the requestor. Before denying a request on the basis that the information or material is not obtainable with a reasonable amount of effort, the component shall ask the requestor to limit the request to information or material that is reasonably obtainable. If the information or material requested cannot be described in sufficient particularity, or if it cannot be obtained with a reasonable amount of effort, the component shall provide the requestor with written notification of the reasons why no action will be taken and the right to appeal the decision to the DRC.

(d) The component that originally classified the information shall provide a written response to requests for mandatory review within 60 days whenever possible, or shall inform the requester in writing why additional time is needed. Unless there are unusual circumstances, the additional time needed by the component originally classifying the information shall not extend beyond 180 days from the receipt of the request. If no determination has been made at the end of the 180 day period, the requester may apply to the DRC for a determination.

(e) If the component that originally classified the information determines that continued classification is warranted, it shall notify the requester in writing of the decision and the right to appeal the decision to the DRC no later than 60 days after receipt of the notification of the decision.

(f) The DRC shall determine the appeals of the components' mandatory

declassification review decisions within 60 days after receipt of the appeal, or notify the requester why additional time is needed. In making its determinations concerning requests for declassification of classified information, the DRC, for administrative purposes, shall impose the burden of proof on the originating component to show that continued classification is warranted. The DRC shall provide the requester with a written statement of reasons for its decisions.

(g) If the individual requesting review of a classification is not satisfied with the DRC's decision, he or she may appeal to the ISCAP pursuant to section 5.4 of Executive Order 12958 and rules issued by the ISCAP pursuant to that section.

§ 17.32 Notification of classification changes.

All known holders of information affected by unscheduled classification changes actions shall be notified promptly of such changes by the original classifier or the authority making the change in classification.

Subpart C—Access to Classified Information

§ 17.41 Access to classified information.

(a) No person may be given access to classified information or material originated by, in the custody, or under the control of the Department, unless the person—

(1) Has been determined to be eligible for access in accordance with sections 3.1–3.3 of Executive Order 12968;

(2) Has a demonstrated need-to-know; and

(3) Has signed an approved nondisclosure agreement.

(b) Eligibility for access to classified information is limited to United States citizens for whom an appropriate investigation of their personal and professional history affirmatively indicated loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use,

handling, and protection of classified information. A determination of eligibility for access to classified information is a discretionary security decision based on judgments by appropriately trained adjudicative personnel. Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States and any doubt shall be resolved in favor of the national security. Sections 2.6 and 3.3 of Executive Order 12968 provide only limited exceptions to these requirements.

(c) The Department of Justice does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information. However, the Department may investigate and consider any matter that relates to the determination of whether access is clearly consistent with the interests of national security. No negative inferences concerning the standards for access may be raised solely on the basis of the sexual orientation of the employee or mental health counseling.

(d) An employee granted access to classified information may be investigated at any time to ascertain whether he or she continues to meet the requirements for access.

(e) An employee granted access to classified information shall provide to the Department written consent permitting access by an authorized investigative agency, for such time as access to classified information is maintained and for a period of three years thereafter, to:

(1) Financial records maintained by a financial institution as defined in 31 U.S.C. 5312(a) or by a holding company as defined in 12 U.S.C. 3401;

(2) Consumer reports under the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*); and

(3) Records maintained by commercial entities within the United States pertaining to any travel by the employee outside the United States.

(f) Information may be requested pursuant to the employee consent obtained under paragraph (e) of this section only where:

(1) There are reasonable grounds to believe, based on credible information, that the employee or former employee is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power;

(2) Information the Department deems credible indicates the employee or former employee has incurred excessive indebtedness or has acquired a level of affluence that cannot be explained by other information; or

(3) Circumstances indicate that the employee or former employee had the capability and opportunity to disclose classified information that is known to have been lost or compromised to a foreign power or an agent of a foreign power.

§ 17.42 Positions requiring financial disclosure.

(a) The Assistant Attorney General for Administration, in consultation with the Assistant Attorney General for National Security, shall designate each employee, by position or category where possible, who has a regular need for access to any of the categories of classified information described in section 1.3(a) of Executive Order 12968.

(b) An employee may not hold a position designated as requiring a regular need for access to categories of classified information described in section 1.3(a) of Executive Order 12968 unless, as a condition of access to such information, the employee files with the Department Security Officer:

(1) A financial disclosure form developed pursuant to section 1.3(c) of Executive Order 12968 as part of all background investigations or reinvestigations;

(2) The same financial disclosure form, if selected by the Department Security Officer on a random basis; and

(3) Relevant information concerning foreign travel, as determined by the Department Security Officer.

[Order No. 2091-97, 62 FR 36984, July 10, 1997, as amended by Order No. 2865-2007, 72 FR 10069, Mar. 7, 2007]

§ 17.43 Reinvestigation requirements.

Employees who are eligible for access to classified information shall be subject to periodic reinvestigations and